

1 MR. GENO: So you know, Your Honor,
2 and I'll get to this in more detail.

3 JUDGE SIPPEL: Well, I really do
4 appreciate this -- go ahead.

5 MR. GENO: The Southern California
6 Regional Railway Authority contract that
7 everybody's talked about so far, is set for
8 approval before the bankruptcy court on November
9 21st.

10 We filed a motion to assume that
11 contract October the 12th. We also hope to, by
12 the end of this week or early next week, file
13 motions to assume all of the other active pre-
14 petition sale contracts, to the extent the Court
15 will set those on November 21st for hearing,
16 we'll ask the court to do that.

17 If not, we have November 28th and
18 29th, I believe, also set aside for hearings on
19 those. So we're going to know how the
20 bankruptcy court feels about this and the other
21 contracting parties and other interested parties
22 feel about this pretty soon.

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1 That's as to the pre-bankruptcy sale
2 contracts that are still active and the debtor
3 moves to assume and ask bankruptcy court
4 approval on.

5 JUDGE SIPPEL: Now, these contracts
6 though, they're not, they don't have anything to
7 do with the contracts that these applicant
8 parties have in this case, or they are the same,
9 one and the same?

10 MR. GENO: Yes, sir.

11 MR. KELLER: These are --

12 JUDGE SIPPEL: All right, well, don't
13 you need the consent of the applicant parties
14 for that too?

15 MR. GENO: We do, Your Honor. We
16 sure do.

17 JUDGE SIPPEL: Do you have them all?

18 MR. GENO: Not all.

19 JUDGE SIPPEL: Have all of them
20 signed on?

21 MR. GENO: Not all. Most, but not
22 all.

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1 JUDGE SIPPEL: Interesting. And what
2 do they stand to gain from this, the applicant
3 parties? They're obviously going to receive
4 something of value for those contracts, right?

5 MR. GENO: They would have bankruptcy
6 court approval for the consummation of those
7 contracts to go forward, subject to approval
8 here.

9 MR. KELLER: Your Honor, if I may?

10 JUDGE SIPPEL: Hold on just a second.
11 I'm thinking. Now this evaluation, this \$48
12 million evaluation back in 2008, did you say?

13 MR. GENO: \$42 million, Your Honor,
14 in 2008.

15 JUDGE SIPPEL: Did I say -- I meant
16 to say 42. Have you, Miss Kane, have you seen
17 that?

18 MS. KANE: I'm sorry, Your Honor.

19 JUDGE SIPPEL: Have you seen that
20 \$42 million evaluation?

21 MS. KANE: We haven't seen the
22 actual paperwork related to that. We've only

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1 seen the document that was submitted with the
2 bankruptcy court that just identified it as, I
3 think it was \$45 million as a valuation of the
4 licenses as of 2008.

5 As I said, we've only seen the one
6 contract that they entered into with the
7 applicant parties, that put a price for various
8 portions of the spectrum of one of the four
9 licenses.

10 JUDGE SIPPEL: That was \$7.

11 MS. KANE: That was the \$7 million
12 price. You know the \$13 million number that
13 Mr. Geno just provided is the first we've heard
14 of that, but in terms of placing a value on the
15 spectrum, I think Mr. McFadden articulated it
16 very well before, which is that Maritime has
17 negotiated a value in each of these contracts.

18 And, as Mr. Keller informed you
19 earlier, each of those contracts do not cover
20 the entirety of those licenses.

21 There are still large portions of
22 those licenses up for sale at, potentially, the

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1 market value that they've already set for the
2 other portions.

3 For example, the SCRRA license has a
4 .35 cents per megahertz per pop, which is the
5 way that these are valued, for approximately
6 half of the geographic license.

7 So, arguably, there's still half of
8 that license left that could be offered at .35
9 cents per megahertz/pop, or some other amount,
10 which could amount to \$7 million or more.

11 I mean, if we're at \$13 million
12 already, that's not a very far way to go to
13 \$24, which, as Mr. McFadden articulated, is the
14 most that would possibly be allowed for
15 innocent creditors.

16 That number may, in fact, be reduced
17 as we determine the relationship between some
18 of these creditors and Maritime and the alleged
19 wrong-doing here.

20 JUDGE SIPPEL: Well, okay. That's a
21 lot to chew on, at least for me. But, what I -
22 - is there any obligation to the Bureau and Mr.

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1 McFadden getting copies of those evaluations,
2 both the \$48 million one and the current one,
3 where you come up with the \$13 million? I
4 mean, can they see those numbers?

5 MR. GENO: I actually do not have --
6 the debtor does not have the appraisal either,
7 Your Honor. It's held by the major secured
8 creditor. They tell us what the value is.
9 They have not shared that with us.

10 JUDGE SIPPEL: Well, any --

11 MR. GENO: And, as to the contracts,
12 there are confidentiality clauses in many of
13 the contracts, but with bankruptcy being a
14 transparent proceeding, we're going to ask all
15 of the other contracting parties if we can
16 simply attach copies of those contracts to the
17 papers we filed in bankruptcy. So once they're
18 filed, as was the case with the Southern
19 California Railway, everybody will see those
20 contracts.

21 MS. KANE: Well, Your Honor, there's
22 a protective order entered in this case, with

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1 each of the applicants who are subject to those
2 contracts.

3 There shouldn't be any basis why any
4 of the parties in this room shouldn't have
5 access to those contracts, which we asked for
6 in discovery in July.

7 JUDGE SIPPEL: See, that's the
8 problem. That's the problem, is you held off,
9 you know, you dug your heels in on this
10 discovery, and now we're both stuck. Because I
11 can't give you a ruling.

12 I can't give you an absolute ruling
13 that we're forever not going to hear this case,
14 unless it gets sent back to me.

15 Nobody can go forward in this at
16 this posture. You've got to give that
17 information up, and she let you, Ms. Kane's --
18 you've got a protective order, and we got some
19 pretty smart people in this room, and
20 somebody's got to figure it out before they
21 give it to me, because I'm not going to sit
22 here and figure it out in camera.

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1 MR. KELLER: Your Honor, there's a
2 few things I'm concerned about. But first of
3 all, there's a difference between providing on
4 an informal basis some of this information
5 that's going to be transparent, as Mr. Geno
6 mentioned, in context of the bankruptcy anyway,
7 as opposed being, sort of, subject to just
8 open-ended discovery, you know, just allowing
9 discovery to go forward, but --

10 JUDGE SIPPEL: Wait a minute.
11 That's not --

12 MR. KELLER: No, no --

13 JUDGE SIPPEL: -- we're not talking
14 about open-ended.

15 MR. KELLER: But the way this came
16 up, Ms. Kane keeps saying the Bureau requested
17 this, but they requested it in the context of
18 overall discovery requests.

19 JUDGE SIPPEL: You're not -- you
20 know what? There's a procedure for doing that,
21 saying look, we'll give them half a loaf, but
22 we're not giving them a whole loaf.

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1 MR. KELLER: But that's my point,
2 Your Honor.

3 JUDGE SIPPEL: I've seen a lot of
4 that happen in these cases. Not in these -- I
5 know I've seen a case like this, but I've seen
6 a lot of that happen in just as big cases, in
7 this agency.

8 Now why can't that be done? I mean,
9 you're not -- what you're doing is you're not
10 cooperating. You're not getting into the game
11 and making this thing work. You're holding
12 back, and it can't work when you hold back. Do
13 you understand what I'm saying?

14 MR. KELLER: I understand what
15 you're saying, Your Honor.

16 JUDGE SIPPEL: It's not going to
17 change you, though.

18 MR. KELLER: No, I didn't say that
19 either.

20 JUDGE SIPPEL: Well, I don't want to
21 have to issue an order on this. I wish you
22 would just come forward with that information

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1 and give it to the attorneys.

2 I don't know if you want to limit
3 the distribution of it, I don't know if
4 everybody in this room has to see it or wants
5 to see it, at this point.

6 That's something else we can
7 determine, if not here, down the road a bit.
8 But at least to the Bureau and to Mr. McFadden.
9 They're the ones that are litigating this case.

10 MR. KELLER: I understand.

11 JUDGE SIPPEL: Just give them what
12 they're asking for. You don't have to give
13 them the whole thing that they've asked for in
14 a pleading, I mean, right now I'm saying give
15 them what they're asking for. I think it's
16 essential information. Is that correct?

17 MS. KANE: Well, Your Honor, we'd be
18 happy to draft a separate document request, or
19 a separate interrogatories that are directed to
20 just the Second Thursday issues, but --

21 JUDGE SIPPEL: That's what I'm
22 trying to avoid.

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1 MS. KANE: I understand that, I've -

2 -

3 JUDGE SIPPEL: You've drafted so
4 many papers --

5 MS. KANE: I --

6 JUDGE SIPPEL: And I've gotten
7 nowhere, and they're good papers. Mr. McFadden
8 is saying wait, he doubles the size of your
9 papers.

10 MS. KANE: We try to be concise,
11 Your Honor.

12 JUDGE SIPPEL: So there's got to be
13 notice of this thing, it certainly is not a
14 situation of inadequate notice.

15 MS. KANE: Well, we could identify a
16 request that we've already asked --

17 JUDGE SIPPEL: Thank you.

18 MS. KANE: -- that are pertinent to
19 this issue. I don't have them right in front
20 of me, but --

21 JUDGE SIPPEL: I think Mr. Keller
22 knows exactly what's there. Just --

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1 MS. KANE: Well, I do too, Your
2 Honor.

3 JUDGE SIPPEL: -- tell him in a
4 phone call or a letter that, for the time
5 being, or pursuant to what the Judge said in
6 the conference this morning, we want you to
7 give us, boom.

8 And the rest of it is, right now, is
9 indeterminate, so that you're not being put
10 through an intense, you know, burden.

11 In other words, I'm carving out a
12 big exception to the discovery rules and to the
13 discovery documents that have been served on
14 you, to alleviate your situation as best I can.

15 But we have to bring the information
16 in that can move this case forward, one way or
17 the other. So you decide what you're going to
18 do.

19 MR. KELLER: Yes. The other --

20 JUDGE SIPPEL: I mean, I'll issue
21 orders. I mean, if I have to, I'll go down
22 that road, but --

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1 MR. KELLER: Well --

2 JUDGE SIPPEL: -- it's a waste of
3 time.

4 MR. KELLER: -- part of the problem
5 sitting here in just a vacuum like this, is
6 what that request will be, I mean, I would --

7 JUDGE SIPPEL: Well, you have to
8 wait for, obviously you get the request --

9 MR. KELLER: Obviously, if they
10 request just the contracts, that's one thing we
11 can deal with, but then if there start to be
12 other requests, and there's going to be other
13 interrogatories -- what I was going to suggest,
14 Your Honor, is --

15 JUDGE SIPPEL: Go ahead.

16 MR. KELLER: We're very shortly away
17 from, as Mr. Geno said, we're going into
18 bankruptcy court on the 21st on the hearing on
19 the Southern California contract. He's making
20 yeoman efforts to try and get all the other
21 contracts put into that.

22 In the meantime, we're separately

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1 working with trying to put together something
2 for the whole shooting match. In other words,
3 the remainder.

4 And to respond to Mrs. Kane's thing,
5 I can't disclose a lot of the details right
6 now, but the parties we're talking to about
7 that would be creditors. I mean, in other
8 words, if somebody does come in to, sort of,
9 pick up the whole thing, it would be a
10 creditor, so it would be within the precedent
11 of the Mobile Media case, but what I was going
12 to say was, that hearing's coming up shortly.

13 In a very short time, we're going to
14 be in a position to really know what we're
15 shooting at here, to know what the transactions
16 are, to know what the deals are going to be,
17 and to put together a comprehensive Second
18 Thursday showing on the basis of that. That's
19 number one. So then we'll be dealing with a
20 real set of transactions, not speculation.

21 Number two, in the process of doing
22 that, the nature of the bankruptcy proceeding

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1 is in its -- it's much more transparent, quite
2 frankly, than a typical assignment of license
3 application proceeding at the FCC. Much of
4 that information is going to already, by its
5 very nature, come out in the context of the
6 bankruptcy. Once --

7 JUDGE SIPPEL: Maybe we should
8 change our procedures.

9 MR. KELLER: Once that -- well, I'm
10 not saying that that was a good or a bad thing
11 --

12 JUDGE SIPPEL: No, I know.

13 MR. KELLER: I know, I know.

14 JUDGE SIPPEL: I'm just -- go ahead.

15 MR. KELLER: But it seems to me that
16 once we've got -- I would be happy to sit down
17 with the Bureau or even respond to requests,
18 once the actual proposal was before for them to
19 -- then people can sort of poke -- right now,
20 there's been objections made to just the
21 concept of us even trying to do Second
22 Thursday, before we've even had a chance to

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1 formulate exactly what the details of the
2 proposal are going to be.

3 We put before you the details of the
4 proposal. The Bureau and the other parties can
5 then look at that and say, well, here's the
6 information we think we still need to know, but
7 a lot of this information may be moot, based on
8 what the terms of the deal end up being.

9 JUDGE SIPPEL: No, I --

10 MR. KELLER: We're going to be at
11 that point in fairly short order.

12 JUDGE SIPPEL: Well, that covers it.
13 All right, okay, okay. I appreciate what
14 you're saying, and we can set a date for you
15 and Mr. Geno to file a definitive status report
16 on the bankruptcy, based on what you just
17 represented. I can do that. That'll be early.
18 That'll be, you know, sometime late November or
19 early December.

20 But today is a different issue.
21 What I started out asking for was there are two
22 estimate documents out there, or valuations, if

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1 you will.

2 One of them is 2008 for \$7 million.
3 There's another one someplace for \$48 million,
4 and then there's the \$13 million that somebody
5 put in the bankruptcy proceeding, but from what
6 I hear from Mr. Geno, you don't even know what
7 that is, except the bottom line number. Is
8 that correct?

9 MR. GENO: That's right, Your Honor.

10 JUDGE SIPPEL: And they won't
11 disclose it to you? They'll have to at some
12 point, but they're not, right now, they won't
13 disclose it?

14 MR. GENO: Well, they --

15 JUDGE SIPPEL: Whoever they are.

16 MR. GENO: They is Pinnacle Bank.

17 They have told us what their appraisal is --

18 JUDGE SIPPEL: Bank?

19 MR. GENO: Yes.

20 JUDGE SIPPEL: Chemical Bank?

21 MR. GENO: Pinnacle. Pinnacle.

22 JUDGE SIPPEL: They were involved in

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1 those chopped up mortgages, weren't they, in
2 some way? I mean --

3 MR. GENO: I don't know about that.

4 JUDGE SIPPEL: A bank is holding
5 that information up? Okay, go ahead, I'm
6 sorry.

7 MR. GENO: I don't know about that,
8 Your Honor. They requested the appraisal.
9 They are the senior secured creditor of the
10 debtor. Sometime in 2008, and it was
11 performed, they told us the number, \$42
12 million, but they have not yet shared the
13 appraisal with us.

14 We have asked for it, but do not yet
15 have the written document. The \$13 million
16 valuation is the net amount the bankrupt's
17 estate will receive if all of the existing pre-
18 bankruptcy contracts are approved for the
19 debtor to assume. The FCC approves those, and
20 we get the money in hand. That's where the \$13
21 million comes from.

22 JUDGE SIPPEL: So it really isn't

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1 something that's definitive.

2 MR. GENO: It is not.

3 JUDGE SIPPEL: So do we even care
4 about that number now? I mean, for these
5 purposes, do we care about it?

6 MS. KANE: Your Honor, the amounts
7 that Maritime has negotiated with these
8 applicants that --

9 JUDGE SIPPEL: Those are different
10 numbers. Yes.

11 MS. KANE: Well, to the extent that
12 that allegedly results in this \$13 million
13 dollars, those contracts are established,
14 they're in Maritime's possession, and each of
15 those contracts sets a market value for the
16 spectrum at issue in this hearing.

17 So at the very least, we should be
18 entitled to those contracts, and we should be
19 entitled to any other valuations they may have.
20 Any other contracts they may have tried to
21 enter into, any other negotiations they're
22 entering into that puts a value on the spectrum

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1 at issue here. That's tantamount to a Second
2 Thursday analysis.

3 In addition, we should be entitled
4 to discovery that identifies the various
5 creditors on their list, and their involvement
6 in any potential wrong-doing, based on their
7 relationship with the various alleged wrong-
8 doers, to determine if, in fact, they're
9 innocent creditors, because, again, for a
10 Second Thursday analysis, that will impact the
11 amount of innocent creditor debt that must be
12 paid.

13 Without that basic discovery, you
14 know, it would be near impossible to determine
15 whether or not they are entitled to Second
16 Thursday.

17 And although Mr. Keller says they're
18 willing to do that at whatever time in the
19 future that they end up filing a motion for
20 extraordinary relief under Second Thursday,
21 there's no basis for why we shouldn't have that
22 information now, in determining whether a

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1 hearing would be inevitable.

2 JUDGE SIPPEL: Well, that's what I'm
3 trying to get at.

4 MR. KELLER: Your Honor --

5 JUDGE SIPPEL: That's what I'm
6 trying to get at.

7 MR. KELLER: Your Honor --

8 JUDGE SIPPEL: How much information
9 of that nature can you give Ms. Kane?

10 MR. KELLER: I'll answer that in just
11 a second, but first I want to say one thing. I
12 disagree that at this stage the valuations are
13 that relevant. Within a very short time, we're
14 going to have actual contracts. It doesn't
15 matter what the valuations are. What
16 ultimately matters is how much money is going
17 to come in when these licenses are sold. We're
18 going to have actual contracts, approved by the
19 bankruptcy court, in part of applications filed
20 with the FCC. We'll have real numbers. We
21 won't have to be dealing with valuations.

22 Then, at that point, if somebody

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1 wants to make an argument that that's too
2 little or too much, that's a different story,
3 but I think it's a waste of everybody's time
4 and money to engage in that exercise now, based
5 on speculative valuations. That's number one.

6 Number two, I will get with Mr. Geno
7 and my client, and I think there's probably
8 some way that we can do two things. We can
9 probably find some way of providing, at least,
10 subject to the protective order, and maybe in
11 some redacted form on an informal basis, those
12 contracts, releasing details of them, and also
13 I have no objection to going through the list
14 of creditors and identifying those who will not
15 be included in any disbursements, and those who
16 are, and a brief description of who they are
17 and what they are.

18 And then, at that point, again, once
19 that's all on the table, we can talk about
20 whether any further information is needed. But
21 to go -- see, part of the --

22 JUDGE SIPPEL: Okay, wait a minute.

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1 You've made good points here, I think. As a
2 preliminary, would both of you parties be --
3 Mr. McFadden, Ms. Kane, would you be satisfied
4 with that?

5 MS. KANE: Well, if we could --

6 JUDGE SIPPEL: I mean, I know you're
7 going to sit down and talk about it, I
8 understand that. But what I'm saying, that
9 process, would you be satisfied with that?

10 MS. KANE: Well that would be --

11 JUDGE SIPPEL: For the time being.

12 MS. KANE: That would be a starting
13 point, Your Honor.

14 JUDGE SIPPEL: Yes. Yes, ma'am.

15 MS. KANE: But, no, I don't think we
16 should be subject to a redacted document from
17 the contracts. All of that should be covered
18 by the protective order that everybody in this
19 room and all of the applicants who are parties
20 to those contracts has signed.

21 JUDGE SIPPEL: Well --

22 MS. KANE: So we --

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1 JUDGE SIPPEL: -- that's the first
2 time I've heard redacted. You're not talking
3 about redacts, are you?

4 MR. KELLER: I've got to get with
5 the parties in terms of what the protective
6 order says and what the confidentiality
7 provision is, and, I mean, quite frankly, it
8 just has not come up yet that we've considered
9 this sort of narrow providing of some
10 information.

11 Everything's been looked at in terms
12 of overall discovery requests. Quite frankly,
13 I mean, the company does not have any money to
14 pursue further litigation, including discovery.
15 And so that's why we sort of, under Second
16 Thursday said, let's stop everything if we can.

17 This sort of is a new concept of can
18 we provide some limited narrow amount of
19 information outside the context of normal
20 discovery, and we're willing to look at that
21 and be as cooperative as we can.

22 JUDGE SIPPEL: You know, Mr. Keller,

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1 on those general discovery documents, I'm
2 always thinking that the ingenuity of lawyers
3 will take care of any problems with that
4 document. It's like a squeaking door.
5 Somebody's got to put the oil on it. That's
6 all it is.

7 MR. KELLER: Well --

8 JUDGE SIPPEL: You could have done
9 this --

10 MR. KELLER: -- Your Honor --

11 JUDGE SIPPEL: -- two months ago.

12 MR. KELLER: You're probably right
13 about that, Your Honor, except the practical
14 matter of whether where the work's at is an
15 answer that is unsatisfactory, then, to the
16 party requesting, then a motion to compel, and
17 then responses --

18 JUDGE SIPPEL: I know --

19 MR. KELLER: -- and then the --

20 JUDGE SIPPEL: I know how that
21 works.

22 MR. KELLER: And then we up the

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